

REMARKS

In the above-identified Office Action, the Examiner has provisionally rejected claims 1, 3-20 on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-20 of co-pending application 10/628,502. Applicant notes that this application is abandoned and accordingly this rejection should thereby be obviated.

Claims 1, 4, 5, 16 and 17 have been rejected as unpatentable over Yajima in view of California Wheat Commission and Schellhaass and further in view of Seika and Shokuhin. The Examiner has stated that Yajima differs from claim 1 in the particular amount of protein in the wheat flour. Applicant points out that the subject invention also differs in the use of oat flour. The Examiner apparently has cited Saska to show from Yajima the use of oat flour with wheat flour. The Examiner has stated that it is known that oat flour is nutritious and must be supplemented with gluten in order to be used in a bakery product to give the product structure; thus, it would have been within the skill of the ordinary worker to use various amounts of oat flour depending on the nutritional value required. The Examiner further states that the discovery of an optimum value of a result effective variable is ordinarily within the skill of the art. The Examiner has not provided a reference in this rejection teaching the use of more than 50% oat flour in a flour composition; further, the Examiner has not provided a reference teaching that the content of oat flour in a flour composition is a result effective variable. Accordingly, Applicant believes that its discovery that the content of oat flour in a flour composition is a result effective variable and further, finding that a flour composition, which is a combination of wheat flour, which provides the stated amount of crude protein, in combination with more than 50% oat flour, to provide a product with singularly good taste and texture when made into a pasta, is patentable.

Claims 3 and 6-20 have been rejected as unpatentable over Yakima and further in view of Hunter. Claims 3 and 6-20 are each dependent upon claims 1, 11 and 16 which are patentable as set forth above, and accordingly such dependent claims should also be patentable.

Claims 1, 3-5 and 11 have been rejected as unpatentable over Lai et al. in view of the California Wheat Commission. The Examiner states that it would have been obvious to use oat flour if gluten is added because the added gluten will make up for the non-gluten containing oat flours. Lai teaches, as stated by the Examiner, that it is known to make a dough product with added gluten, and to use wheat flour, and other flours such as rye, corn, oats, and tricale. However, in Lai's teaching, oats is mentioned as almost an afterthought and thus cannot be termed a result effective variable. Further, the oat flour is intended to be a substitute for the wheat flour. Thus, if oat is used, there is no wheat flour, a necessary element of the subject invention. As such, it would not be obvious to follow the teachings of the Lai and add over 50% oat flour to wheat flour in a dough composition. As such, Applicant believes that claims 1, 3-5 and 11 are patentable over Lai et al. in view of the California Wheat Commission.

Applicant hereby requests reconsideration and reexamination thereof.

With the above amendments and remarks, this application is considered ready for allowance and Applicant earnestly solicits an early notice of same.

Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to call the undersigned at the below-listed number.

Respectfully submitted,
WELSH & KATZ, LTD.



Gerald T. Shekleton
Registration No. 27,466

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WELSH & KATZ, LTD.
120 South Riverside Plaza
22nd Floor
Chicago, Illinois 60606-3912
Telephone: (312) 655-1500
Facsimile: (312) 655-1501